precisely the same circumstances would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection."

The same is true here. This Court needs to make plain that the validity of an emergency circumstances entry turns on whether, under the objective facts, it is reasonable to conclude that a person inside is in need of immediate aid or that entry is required to *prevent* serious injury from occurring. And that when an immediate entry may prevent serious injury from occurring, that medical attention has not yet become necessary scarcely impugns even the subjective motivations of the entering officers.

Petitioner also details the split of opinion in various jurisdictions regarding the gravity of the emergency required before the emergency aid doctrine may be applied. The Utah Supreme Court found it inapplicable because serious bodily injury had not yet occurred. But the *avoidance* of great bodily harm is a permissible purpose of immediate entry, and officers must make an immediate, on-the-spot assessment that should not lightly be second-guessed.[5] That delay when faced with an altercation of the sort involved here might result in occurrence of a serious injury, which could have been avoided by immediate action, renders the action of the police in entering entirely reasonable. It is *un*reasonable to require that the police wait to enter until serious bodily injury has occurred or a deadly weapon is employed.

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[5] "Where . . . the police are called upon to respond to a crime reported to be in progress, . . . the police judgments [concerning entry of the premises] should be afforded an extra degree of deference." *Reardon v. Wroan*, 811 F.2d 1025, 1029 (7th Cir. 1987).

C. Where from outside premises police observe acts of physical violence occurring inside the premises, immediate entry by the police is justified by the doctrine of exigent circumstances, as part of the law-enforcement function of the police.

The level of information necessary for the police to enter premises under the emergency aid doctrine is akin to reasonable suspicion.[6] But where entry is justified by exigent circumstances in the exercise of the law-enforcement function of the police, probable cause that a crime has been committed is required.[7] Some courts,[8] including the Utah Supreme Court here, take the view that exigent circumstances cannot justify entry to preserve evidence of a "minor" offense or to arrest for a minor offense; these courts often cite *Welsh v. Wisconsin*.[9] But *Welsh* does not require the result here or in other cases cited in the petition.

Welsh did not involve entry where there was probable cause to believe a crime was occurring before the very eyes of the police officers on the scene, but rather an entry to preserve evidence – blood-alcohol content – that would dissipate with time and thus be unavailable if delay occurred. An exigent circumstances entry requires probable cause that a crime was committed and reason to believe that evidence will be destroyed or lost if entry is delayed to obtain a warrant, *where preservation of evidence is the purpose of the entry*. In *Welsh*, this Court held

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[6] *See, e.g., People v. Davis*, 442 Mich. 1, 20, 497 N.W.2d 910 (1993).

[7] *See, e.g., United States v. Baskin*, 424 F.3d 1, 2 (1st Cir. 2005).

[8] *See* Petition at 11-14.

[9] 466 U.S. 740 (1984).

that where the offense is a minor one (and it must be borne in mind that the statute there provided that a first offense was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200), the "preservation of evidence" component of exigent circumstances will not justify a warrantless entry.

But preservation of evidence is not the only justification for an exigent circumstances entry – that entry may also be justified, as with emergency circumstances, to prevent injury to a person or persons (generally involved with an ongoing crime) or even injury to property (also generally involved with an ongoing crime). Unlike evidence gathering, where the purpose of an entry based on probable cause to believe that a crime has been committed is to prevent injury or damage to property, the entry is justifiable without regard to the seriousness of the offense. As one court – which hardly stands alone – has said, "[i]t would have been wholly unreasonable [for the police] to stand idle, watching further damage being done to cars which were almost certainly stolen, while a warrant was obtained. As police officers, they had a duty to preserve and protect the property of the owners, and . . . exigent circumstances justified their entry into the garage."[10]

Amici submit that where probable cause exists – and it existed here – that which drives the permissibility of the entry may be the seriousness (or lack of seriousness) of the offense *only* when preservation of evidence is the justification. But seriousness of the offense is not relevant when the justification – as with emergency circumstances – is to

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[10] *United States v. Conner*, 478 F.2d 1320, 1324 (7th Cir. 1973). *See also* Petition at 12 n.3.

prevent or avoid injury (or further injury) to either property or persons. That an assaultive offense is occurring before the eyes of the officers should, *by definition*, permit the entry of the officers into the premises on this basis under exigent circumstances, as well as under the emergency aid doctrine.

D. Summary.

Police who arrive at premises in response to disturbance calls and, from without the premises, see or hear evidence of violence occurring within the premises, must make an immediate judgment as to how to respond. A judgment to enter should be afforded particular deference. The community-caretaking function of the police permits the police to enter if it is reasonable to believe that someone inside is in need of immediate aid, or that entry will avoid either injury or further injury. For this entry to be reasonable under the Fourth Amendment the question is what the objective facts reveal, not the arguable subjective motivations of the officers. Moreover, the fact that serious injury has not yet occurred does not render an entry unreasonable when an assault is ongoing at the time of the officers' arrival, when prompt action may *prevent* escalation of the situation and serious injury.

The exigent circumstances exception concerns a warrantless entry into premises when the police are exercising their law-enforcement function. There must be probable cause to believe a crime has occurred or is occurring, and it must be reasonable to believe that delaying entry until a warrant is obtained will result in the loss of evidence or injury to persons. Where the concern is preservation of evidence, an entry is not reasonable where the

offense is a very minor one (perhaps simply a civil infraction). But the seriousness of the offense should not be of concern when the purpose of the entry is to avoid or prevent injury to persons or property.

Because courts across the country are in disarray on these questions, *amici* submit that plenary review is needed here.

CONCLUSION

For the foregoing reasons, *amici* ask that the petition for certiorari be granted.

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